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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/354,058	07/15/1999	JOHN CRESCENTI	044463.0014	4549
29858	7590	12/14/2004	EXAMINER	
BROWN, RAYSMAN, MILLSTEIN, FELDER & STEINER LLP 900 THIRD AVENUE NEW YORK, NY 10022				COLBERT, ELLA
ART UNIT		PAPER NUMBER		
3624				DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/354,058	CRESCENTI ET AL.	
	Examiner	Art Unit	
	Ella Colbert	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 April 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-5,7-13,15-17 and 19-30 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-5,7-13,15-17 and 19-30 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>09/15/04, 10/18/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-5, 7-13, 15-17, and 19-30 are pending in this communication filed 4/01/04 as Claim, Specification, and remarks has been entered. Claim 7 has been amended in this communication.
2. The RCE and IDS filed 09/15/04 has been entered.
3. The IDS filed 10/08/04 has been reviewed and entered.

Claim Objections

4. Claims 1 and 23 are objected to because of the following informalities: Claim 1, line 10 recites “one other of the plurality of backup cells, and each of the plurality of backup cells”. This line would be better recited “one of the other plurality of backup cells, and each of the plurality of backup cells”. Claim 23, line 14 recites “a management component, configured to reside on and execute on”. This line would be better recited “a management component, configured to reside and to execute on”.

Claims 4 and 7-12 are objected to because of the following informalities: the first manager component and the second manager component is not referenced in the Specification or drawings as the “first manager component” and “second manager component”. It is assumed that 154 is a second manager component and 114 is a first manager component. Applicants’ drawing fig. 1, fig. 2, and fig. 3 does not show a label for a “first manager component” and a “second manager component.” Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1, 4, 10, 16, 20, 23, and 27 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, line 11 recites "adaptable to be controlled by a management component in another of the plurality of". "Adaptable to" in the broadest sense means it can be modified. It is unclear whether the "management component" is software or hardware. How are the cells being backed up? There appears to be elements missing from the claim language such as hardware for the management component so that the management component is capable of controlling the other devices. Claims 4, 10, 16, 20, 23, and 27 have a similar problem with the "manager component".

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-5, 7-13, 15-17, and 19-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 5,005,122) Griffin et al, hereafter Griffin in view of (US 5,276,867) Kenley et al, hereafter Kenley.

With respect to claims 1 and 20, Griffin teaches, at least two backup cells each col. 1, lines 41-45 comprising: and each of the plurality of backup cells communicatively

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coupled to at least one other of the plurality of backup cells, and each of the plurality of backup cells adaptable to be controlled by a management component in another of the plurality of backup cells in col. 2, lines 10-30.

Griffin did not teach, a backup device executing a backup of the data stored on one of the plurality of groups of network devices and a management component, communicatively coupled to at least one backup device, controlling the backup of the data to the backup device.

Kenley discloses, a backup device executing a backup of the data stored on one of the plurality of groups of network devices in col. 2, lines 33-43 and col. 3, lines 40-47 and a management component, communicatively coupled to at least one backup device, controlling the backup of the data to the backup device in col. 5, lines 36-39 and lines 57-63. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a backup device executing a backup of the data stored on one of the plurality of groups of network devices and a management component, communicatively coupled to at least one backup device, controlling the backup of the data to the backup device and to modify in Griffin in view of Griffin's teaching of backup nodes because such a modification would allow Griffin's system to have a backup cell instead of a backup node for backing up data stored on magnetic media for the purpose of minimizing the likelihood of data being lost.

With respect to claim 20, Griffin teaches a management component (col. 1, lines 66-68 and col. 2, lines 1-2 –“Software management consists of a number of functions, including verifying that a user has a correct version, installing new versions as they are obtained, and keeping track of software distribution and use for licensing purposes”);

This independent claim is rejected for the similar rationale as given above for claim 1.

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With respect to claims 2 and 21, Griffin teaches, the backup device is controllable from the management component in another of the plurality of backup cells in col. 2, lines 51-61. With respect to claim 21, Griffin teaches a first backup node (cell) (col. 4, lines 10-15) and a plurality of backup nodes (cells) (col. 3, lines 21-35).

With respect to claims 3 and 21, Griffin teaches, the backup device is controllable from the management component in another of the plurality of backup cells via the management component in the same backup cell as the backup device in col. 2, lines 51-61. With respect to claim 21, Griffin teaches, the first backup cell (node) (see claims 2 and 21), *supra*.

9. Claims 4-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffin and Kenley in view of (US 4,995,035) Cole et al, hereafter Cole.

With respect to claims 4 and 22, Griffin teaches, a first backup cell (node) in col. 2, lines 9-30 comprising:

Griffin did not teach, at least one backup device executing a backup of the data stored on the first group of network devices; a first manager component, communicatively coupled to at least one backup device, controlling the backup of the data to at least one backup device; a second backup cell communicatively coupled to the first backup cell, the second backup cell comprising: a second manager component; and the second manager component directly controlling the backup of the data to at least one backup device.

Kenley discloses, at least one backup device executing a backup of the data stored on the first group of network devices in col. 2, lines 33-43 and col. 3, lines 40-47; a first manager component, communicatively coupled to at least one backup device, controlling the backup of the data to at least one backup device in col. 5, lines 36-39

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and lines 57-63. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have at least one backup device executing a backup of the data stored on the first group of network devices; a first manager component, communicatively coupled to at least one backup device, controlling the backup of the data to at least one backup device and to modify in Griffin because such a modification would allow Griffin to have a hierarchical storage system configured to have a secondary storage element that has a greater storage capacity and slower access speed than the primary storage element with the backing store having greater storage space and slower access speed than the secondary storage element.

Kenley did not disclose, a second backup cell communicatively coupled to the first backup cell, the second backup cell comprising: a second manager component and the second manager component directly controlling the backup of the data to at least one backup device.

Cole discloses, a second backup cell communicatively coupled to the first backup cell, the second backup cell in col. 4, lines 10-26 comprising: a second manager component in col. 5, lines 32-46; and the second manager component directly controlling the backup of the data to at least one backup device in col. 4, lines 62-68 and col. 5, lines 47-60. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a second backup cell communicatively coupled to the first backup cell, the second backup cell comprising: a second manager component and the second manager component directly controlling the backup of the data to at least one backup device and to modify in Griffin and Kenley because such a modification would allow Griffin and Kenley's system to have a second backup cell connected to the first backup cell for backing up data stored on magnetic media for the purpose of minimizing the likelihood of data being lost.

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With respect to claim 5 , Griffin and Kenley did not teach, the second manager component directly controls the backup of data to at least one backup device. Cole discloses, the second manager component directly controls the backup of data to at least one backup device in col. 10, lines 4-52. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the second manager component directly control the backup of data to at least one backup device and to modify in Griffin and Kenley because such a modification would allow Griffin and Kenley to have the node accept the secondary focal point as its focal point if it does not have a focal point for control of the primary focal point.

With respect to claim 7, Griffin teaches, the network computing system comprising a first network device, where the first manager component is a software module executing on the first device, and the second manager component is a software module executing on the second network device in col. 4, lines 62-68 and col. 5, lines 1-4.

With respect to claim 8, Griffin teaches, the network computing system further comprising a second network device, where the second manager component executes on the second network device in col. 6, lines 7-61.

With respect to claim 9, Griffin teaches, the second manager component executes on the first network device in col. 7, lines 13-41.

With respect to claim 10, this independent claim is rejected for the similar rationale as given above for claims 4 and 5.

With respect to claim 11, this dependent claim is rejected for the similar rationale given for claim 9.

With respect to claim 12, this dependent claim is rejected for the similar rationale given for claims 9 and 11.

With respect to claim 13, this dependent claim is rejected for the similar rationale as given above for claim 8.

With respect to claim 15, this dependent claim is rejected for the similar rationale as is given for claim 4.

With respect to claim 16, this independent claim is rejected for the similar rationale given above for claims 4 and 10.

With respect to claim 17, this dependent claim is rejected for the similar rationale given for claims 4-16.

With respect to claim 19, this dependent claim is rejected for the similar rationale as given above for claims 4, 5, 10, 11, 16, and 17.

With respect to claim 23, this independent claim is rejected for the similar rationale given above for claims 4, 10, and 16.

With respect to claim 24, Griffin teaches, a means for communicatively coupling each of the plurality of backup cells to at least one other of the plurality of backup cells and each of the plurality of backup cells adaptable to be controlled by a management component in another of the plurality of backup cells (col. 2, lines 10-30, col. 3, lines 36-68, col. 4, lines 1-15 and fig. 1).

With respect to claim 25, this dependent claim is rejected for the similar rationale as for claim 4, *supra*. Griffith teaches a client component (col. 3, lines 21-29).

With respect to claim 26, this dependent claim is rejected for the similar rationale as for claim 24, *supra*.

With respect to claim 26, this dependent claim is rejected for the similar rationale as given for claims 24-26, *supra*.

With respect to claim 27, this independent claim is rejected for the similar rationale as given for claim 20, *supra*.

With respect to claim 28, this dependent claim is rejected for the similar rationale as given for claims 2, 3, and 20, *supra*.

With respect to claim 29, this dependent claim is rejected for the similar rationale as given for claims 5, 12, and 21, *supra*.

With respect to claim 30, this dependent claim is rejected for the similar rationale as given for claims 15 and 22, *supra*.

Response to Arguments

10. Applicants' arguments filed 4/01/04 have been fully considered but they are not persuasive.

Issue no. 1: Applicants' argue: Regarding the Examiner's objection to informalities believed to be in claims 4 and 7-12 with respect to a "first manager

component" and a "second manager" component" not referenced in the specification or drawings, the applicants' disagree because support amply exists in both the specification and the drawings for at least a first manager component and a second manager component has been considered but is not persuasive. Applicants' Specification and drawings does not say the "management component" is a "first management component" or a "second management component" in the Specification on page 9. The drawing figures do not have a "first management component" or a "second management component" label. Applicants' need to add a "first management component" and a "second management component" to the Specification and to the drawing figure labels in order for the Specification and drawing figures to be in agreement with the claims. This can result in a 35 USC 112, first paragraph rejection for lack of support of the invention as claimed. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to know that the "manager component 114" is a "first manager component" let alone the presence of a "second manager component". Where is the "second manager component" located in the Specification? Where in the Specification does it say the "backup cell" is a "first backup cell" and/or a "second backup cell"?

Issue no. 2: Applicants' argue: Given the very limited way in which Griffin discusses "nodes" as further explained below, Griffin fails to provide any teaching or suggestion of backup cells whatsoever has been considered but is not persuasive. It is interpreted that Griffin does teach backup nodes (cells) because it is unclear what the

difference in Griffin's "node" comprises a computer and nodes that are either client nodes or server nodes". Griffin does perform a backup operation.

Issue no. 3; Applicants' argue: There is no suggestion to combine Kenley's teachings with those of Griffin has been considered but is not persuasive. It is interpreted that Kenley teaches a manager component with the MQM (Mount Queue Manager) because mounting requested volumes, scheduling usage of the removable media, and volume allocation, de-allocation, and access control are part of backing up devices and network components.

Issue no. 4: Applicants' argue: Griffin does not contain any teaching or suggestion of each of a plurality of management servers being able to control the other has been considered but is not persuasive. Response: In response to Applicants' argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "a plurality of management servers being able to control the other") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The rejected claims do not mention "servers" much less "a plurality of management servers being able to control the other". Applicants' are respectfully request to point out to the Examiner in the claim(s) this feature.

Issue no. 5: Applicants' argue: There is no suggestion or motivation to combine Cole with the backup technologies discussed in Griffin and Kenley has been consider but is not persuasive. Response: In response to Applicants' argument that there is no

suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Griffin is interpreted to teach “backup nodes” which is analogous to Applicants’ “backup cells”, Kenley is interpreted to teach “a backup device executing a backup of data stored on one of the groups of network devices in col. 2, lines 33-43 and col. 3, lines 40-47, and Cole is interpreted to teach, a first backup cell (non-focal point node), a second backup cell (a focal point node), a second manager component (a focal point being responsible for different management services – control tables (FP types: primary, secondary, and backup). Thus, it is interpreted that Griffin, Kenley, and Cole together teach the claimed invention.

Conclusion: Applicants’ need to particularly point out and to distinctly claim that which the Applicants’ regard as their invention and to address the issues above in the Specification and the claim language.

The Examiner is entitled to give claim limitations their broadest reasonable interpretation in light of the Specification (see below):

2111 Claim Interpretation; Broadest Reasonable Interpretation [R-1]

>CLAIMS MUST BE GIVEN THEIR BROADEST REASONABLE INTERPRETATION

During patent examination, the pending claims must be “given the broadest reasonable interpretation consistent with the specification.” Applicant always has the

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opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541,550-51 (CCPA 1969). The court determined that to read a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim. "The court found that applicant was advocating the latter, e.g., the impermissible importation of subject matter from the specification into the claim.).<

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicants' disclosure.

Rekieta et al (US 6,230,164) disclosed AIN services including multiple SCP pairs, which can be expanded to meet the increased demand.

Torbjorsnson et al (US 5,555,404) disclosed a database server with a system architecture with multiple nodes.

Inquiries

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 703-308-7064. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1038. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


E. Colbert
December 8, 2004